THE HON'BLE SRI JUSTICE B.PRAKASH RAO

And

THE HON'BLE SRI JUSTICE D.APPA RAO

DATED: 06-03-2006

W.A.NO.214 OF 2005

BETWEEN:

G.Mallaiah .. Petitioner

And

APSRTC and others .. Respondents

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

And

THE HON'BLE SRI JUSTICE D.APPA RAO

W.A.NO.214 OF 2005

ORDER: **(PER HON'BLE Sri justice B.Prakash Rao)**

Heard both the counsel and at their request, the main appeal itself is taken up for disposal.

The unsuccessful writ petitioner is the appellant herein who seeks to assail the order, dated 04.01.2006, in W.P.No.20964 of 2005, passed by the learned single Judge, wherein certain directions were given while disposing of the writ petition filed to declare the in action of the respondents in not fixing the pay in the RPS1997, 2001 by allowing the increment for the out of service period i.e. 28.1.1994 to 25.10.1997 and not paying the full wages for the above period basing on the RPS 1993 as illegal.

The grievance of the appellant is that the earlier writ petition filed by him against the show cause notice was allowed in view of the fact that in action has been disclosed by the respondents.

Having considered the submissions made and on perusal of record, it is seen that this Court while taking into consideration the in action on the part of the respondents, gave the following direction.

> *" Hence, the writ petition is disposed of, directing the second respondent to take a decision, whether to drop the disciplinary proceedings initiated against the petitioner, or to resume the same. In case they are dropped, the manner in which the period of suspension shall be treated, must be indicated. On the other hand, if it is decided to resume the proceedings, they shall commence, by appointing an enquiry officer, and proceed with the matter, in accordance with law. It is needless to mention that in case, the proceedings are not concluded by the time the petitioner attains the age of superannuation, the respondents shall be under obligation to continue the petitioner in service, beyond the date of superannuation, till the conclusion of disciplinary proceedings. There shall be no order as to costs."*

During the course of arguments, learned counsel for the appellant submits that subsequent to the aforesaid directions, the respondents have passed orders on 31.01.2006 on merits treating the suspension period as leave due and the directions given could not be possible since the order of the learned single Judge having been given effect and fresh order has been passed. In view of the

same, fresh cause of action arose to the appellants herein and the same may be challenged by way of separate writ petition. So the very appeal itself is infructuous in view of the subsequent orders passed.

Therefore, we do not find any merit in this appeal and the appeal is accordingly dismissed. However it is open for the appellant herein to assail the subsequent orders of fresh proceedings and the same may be considered uninfluenced by any of the observations given in these proceedings.

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B.PRAKASH RAO,J

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D.APPA RAO,J

Hyderabad

Dated:06.03.2006

Kvrm/mrb